IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

LARRY HOLLINGER,	:	C.A. No. 05-06-0033
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
FURNITURE & MORE, Inc.,	:	
a Delaware Corporation, and	:	
TRAVELERS INDEMNITY COMPANY,	:	
A Connecticut Corporation,	:	
	:	
Defendants.	:	

Upon Defendants' Motion for Reargument

Submitted: September 12, 2006

Decided: September 18, 2006

Defendants' Motion for Reargument is denied.

Walt F. Schmittinger, Esquire, Schmittinger & Rodriguez, P.A., 414 South State Street, P.O. Box 497, Dover, Delaware 19903, Attorney for the Plaintiff

H. Garrett Baker, Esquire, Elzufon, Austin, Reardon, Tarlov & Mondell, P..A. 300 Delaware Avenue, Ste. 1700, Post Office Box 1630, Wilmington, Delaware 19899, Attorney for the Defendants, Furniture & More and Travelers Indemnity Company.

Trader J.

In this civil action for *Huffman* damages, the defendants have filed a motion for reargument of the Court's decision dated August 24, 2006. For the reasons hereafter set forth the defendants' motion for reargument is denied.

When determining a motion for reargument under Rule 59(e), a court must consider whether it overlooked a precedent or legal principle that would a have controlling effect, or that it has misapprehended the law or the facts such as would affect the outcome of the decision. *Gass v. Truax*, 2002 Del. Super. LEXIS 442 (Del. Super. June 28, 2002). I am satisfied that I correctly apprehended the law and the facts in my previous opinion. *Hollinger v. Furniture & More and Travelers Indemnity Company*. C.A. No. 05-06-0033 (C.C.P. August 24, 2006). For a more complete recitation of the facts, please see the Court's previous opinion.

The defendants first contend that they received the medical bills on April 27, 2005, and this date should be used to compute the due date of any medical bill. But comparing the carrier's "received" date for the bills while applying the carrier's "check issued" date for the payments is an unfair comparison. A fairer method is to compare the dates on which the bills were sent with the dates on which the payments were issued. Alternatively, I could compare the dates on which the bills were received with the dates on which the payments were received by the various providers, but the dates that the payments were received by the providers are not before the Court. I conclude that the date of the submission of medical bills by plaintiff's counsel should be compared with the dates the checks were issued. Therefore, April 13, 2005 is the trigger date for *Huffman* damages.

The defendants next contend that the trigger date for *Huffman* damages is not thirty days following receipt of the medical expenses. They cite as supporting authority for their contention the case of *Cunningham v. Acro Extrusion Corp*., 790 A.2d 507, 511 (Del. Super. 2001), *reversed* 810 A.2d 345 (Del. 2002). I disagree. The case before me is clearly distinguishable from *Cunningham* because *Cunningham* involves a decision by the Industrial Accident Board, a subsequent motion for reargument, and a later appeal to Superior Court and the timing of the *Huffman* demand within that context. The Delaware Supreme Court reversed the lower court and held that since the notice of appeal was ambiguous, the prior *Huffman* demand was ineffective. *Acro Extrusion Corp. v. Cunningham,* 810 A.2d 345, 348 (Del. 2002). If the notice of appeal had been unambiguous, Cunningham's prior demand would have triggered a *Huffman* claim. *Id.* The case before me does not involve an ambiguous appeal. It involves a settlement of all medical treatment expenses related to plaintiff's ruptured spleen. A *Huffman* demand made prior to a date that an obligation becomes due is an effective demand. *MacDonald v. Smalls Insurance Co.,* 2000 Del. Super. LEXIS 349 at *15. (Del. Super. Aug. 7, 2000).

The defendants also contend that under IAB Rule 4(B) the medical expenses become due 30 days following receipt of the medical bills. The defendants' contention is incorrect. Despite the language of Rule 4(B), the mere receipt of medical bills does not trigger a responsibility to pay the bills within 30 days. The settlement between the parties results in the obligation to pay medical bills and the failure to pay the medical bills when due is actionable under 19 Del.C. Sec. 2357. Thus, the bills are due as a consequence of the settlement and not by the operation IAB Rule 4.

In the case under consideration, the parties reached a voluntary settlement by an exchange of letters, dated December 27, 2005 and January 4, 2006, and can be enforced even if it has not yet been approved by the Board. *Seserko v. Milford School District*, 1992 WL 19941 (Del. Super. Feb. 4, 1992). By letters dated December 30, 2004, February 3, 2005, February 7, 2005 and April 13, 2005, the plaintiff's attorney sent demand letters to the defendants concerning payment of the unpaid bills. Under 19 Del.C. Sec. 2357, if an employee demands payment of workman's compensation benefits and the employer fails to pay those benefits within thirty days of the demand, the employee is entitled to unpaid benefits as well as liquidated damages. When the plaintiff's counsel submitted the medical expenses to the defendants' previous counsel for payment, a demand letter had already been sent to the defendants. Therefore, the failure to pay arises as of the date of the submission of medical expenses to the defendants' previous attorney.

Finally, the defendants contend that *Kelley v. ILC Dover*, 787 A.2d 751 (Del. Super. 2001) is inapplicable to the case at bar. The defendants' contention is incorrect . *Kelley* held that 19 Del.C. Sec. 2305 strictly precludes an agreement to reduce the employer's responsibility for workman's compensation fund benefits, except as permitted by the Workman's Compensation Act and approved by the Industrial Accident Board. Although this case may not involve an accord and satisfaction, but pre-negotiated contracts, the agreements that the defendants had with the health providers for the reduction of some of the bills cannot be considered because those agreements were not approved by the Industrial Accident Board. Additionally, I note the health providers

continued to bill the plaintiff for the full amount of the medical bills, and they paid the balances of the bills contrary to the alleged discounted arrangement.

Based on the foregoing analysis, the defendants' motion for reargument is denied.

IT IS SO ORDERED.

Merrill C. Trader
Judge